

Missouri

A look at initiative and referendum: past and present

A monograph by Bailey Ludlam for **BALLOT**PEDIA

INITIATIVE AND REFERENDUM is a process that has been used in United States politics for years; allowing citizens in several states to vote directly on pieces of legislation. Missouri has all the tools but still faces some rough spots that hinder the use of initiative and referendum to their fullest extent. This report analyzes the good, the bad and Missouri's history with initiative and referendum.

Off to a good start

Missouri has six of the seven generally acknowledged forms of direct democracy: legislatively-referred constitutional amendments, legislatively-referred state statutes, initiated state statutes, initiated constitutional amendments and veto referendum. The only form of direct democracy that some other states have that Missouri does not is a statewide recall law.

Since Missouri adopted initiative and referendum in 1908, statewide measures have varied from as many as 88 in the 1920s to as few as 14 in the 1950s.

In the latest decade the average is about five per election cycle. The most were eight in 2002, all initiated by the General Assembly.

Most common are constitutional amendments. From 1910 to 2008, 285 proposed amendments have appeared on the ballot; four-fifths referred by the General Assembly. The latest initiated constitutional amendments were in 2006: Amendment 2, allowing stem cell research with some limits, and Amendment 3, creating a trust fund with taxes collected from tobacco products. Legislatively referred amendments, however, have appeared every year on the ballot in the past decade. Of the amendments submitted by the

General Assembly from 1910-2008 voters approved 63% but only 35% of initiated constitutional amendments.

Statutory revisions are a different story. From 1910-2008 51 measures were on the ballot, about half submitted by the General Assembly. Voters approved 38% of initiated statutes and 20% referred by the General Assembly. Two or more initiated state statutes have appeared on the ballot every election year in the past decade with the exception of 2002 when none were certified.

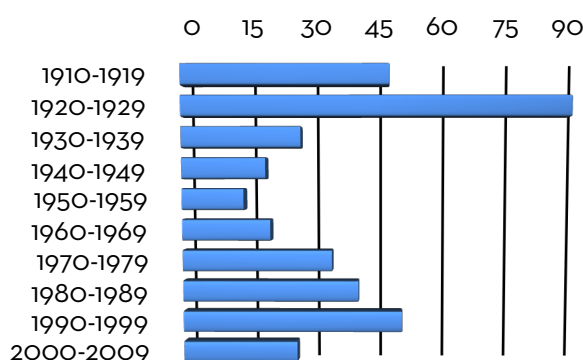
Although statutory initiatives have been more likely to be approved by voters than constitutional amendments, constitutional amendments rank higher in the number of initiatives on the ballot.

Five different avenues exist for referring amendments to statewide ballots: a majority vote in one legislative session, a majority vote in two legislative sessions, a 60% supermajority, a 2/3 supermajority, and a 75% supermajority

Forty nine states allow constitutions to be changed by legislatively referred amendment. The 2/3 supermajority option is the most commonly adopted option; 17 use it. Four states offer an alternative that allows for an amendment to be referred if it is approved by a majority of the legislature in two consecutive sessions or if it receives supermajority approval in one session.

The popularity of legislatively referred amendments can be attributed to relatively uncomplicated laws. Missouri is one of 10 states that allows for amendments to be placed on the ballot after a majority vote in one legislative session. Unlike Illinois, there are no limits to the number of constitutional amendments on the ballot.

Ballot Measures by Decade



Topics and trends

On the statewide ballot no subject seems to be off limits for Missourians. Nearly every topic from taxes to establishing an official state language has made an appearance. However, most in the past decade affect taxes, a common topic on ballots across the nation, whether to increase or reduce them. Of the six measures relating to taxes in the past decade, four were proposed by the General Assembly in 2002 and 2006.

FACT: Since 1962, Missourians have been asked every twenty years if they would like to convene a constitutional convention to revise the constitution; each time, voters have rejected the proposal. It will reappear on the ballot in 2022.

The measures most often referred to the ballot by the General Assembly relate to the administration of government and taxes. Citizen initiatives are scattered. Topics in the past decade include taxes, gambling, the environment, cloning, campaign reform, health care, and the state's minimum wage.

This year is no exception. At least one measure on taxes, referred by the legislature, is scheduled. Of the at least 23 citizen initiatives approved for circulation in 2010 a third relate to taxes, the remaining include, but are not limited to: health care, eminent domain, labor, judicial reform, abortion and law enforcement.

Compared to the 23 other states with initiative and referendum, Missouri is not like California, Colorado or Oregon when it comes to the number of filed initiatives per election year. For the 2010 ballot California and Colorado both had upwards of 90 filed initiatives each about half-way through the election season. Missouri had 24.

Why the low initiatives count? It's a combination of factors. While Missouri might have six of the seven generally acknowledged forms of direct democracy, there are some state laws that make the process hard to navigate.

Qualifying for the ballot

In order to qualify for the ballot all initiatives must gather a minimum number of signatures from at least two-thirds of the state's congressional districts (currently six of the nine). The number of signatures varies for initiated statutes, veto referendum and constitutional amendments. Initiated statutes and veto referendum require a minimum of 5% of the total votes cast for governor in the most recent election, while constitutional amendments require 8%.

During the recent legislative sessions lawmakers did not approve increasing signature requirements to 15% for constitutional amendments, 10% for initiated statutes. The problem most petitioners encounter isn't the minimum number of signatures but the distribution requirement.

In addition to increased signature requirements, lawmakers failed to approve increasing district distribution.

Distribution requirements can be very beneficial. They prevent frivolous measures from flooding the ballot box and wasting voters' time, and ensure "widespread support."

Twelve other states have distribution requirements. Petitioners try to exceed the minimum number of signatures in each district to safeguard against invalidations that could miss the minimum by one district. Campaign costs can skyrocket making it difficult for individuals or organizations with little funding to qualify measures. In reality, these requirements can work contrary to the direct democracy process.

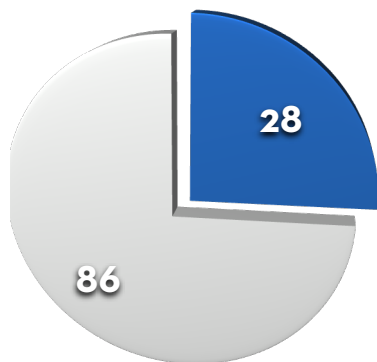
FACT: Distribution requirements have been found unconstitutional in 5 states and challenged in at least two others.

Litigation over ballot titles has been disastrous to proposed initiatives. In 2010 approximately half of proposed initiatives were tied up in lawsuits disputing ballot summary language and fiscal notes written by the Secretary of State and the State Auditor. The lawsuits can take months to

resolve, ultimately harming initiatives' chances by leaving little to no time for petition circulation, or killing initiatives in court.

In the past few years, a clear example of ballot litigation harming initiatives is a series of proposals on eminent domain that were initially proposed for 2008. According to the Secretary of State, proponents had insufficient signatures. After initiating a lawsuit and later withdrawing it, proponents filed initiatives for 2010 immediately following the November 2009 general election. However, that proved to only be the beginning of a year-long legal battle over the ballot title and fiscal note written by the Secretary of State and the State Auditor. Filed in January 2009, the initiatives were tied up in court until March 19, 2010 when the Missouri Supreme Court declined to consider an appeal, leaving proponents less than two months to collect signatures.

Counties with Election Websites



- Data online
- Data missing

Legislation failed in the most recent decade to modify initiative process to reduce frivolous lawsuits and ballot litigation. Some bills called for courts to decide challenges within 55 days from the original certification of the ballot title. The appeals court and the state Supreme Court would have 30 days after an appeal is filed. However, the legislation also stipulates that challenges after a 10-day period following ballot title certification would not

affect the validity of signatures collected during that time.

Other lawmakers propose creation of a joint committee on ballot statements which would review summary language and fiscal notes written by the Secretary of State and the State Auditor. Currently the ballot title and summary are forwarded to the Attorney General for final approval.

Unlike constitutional amendments and statutory initiatives, veto referenda make rare appearances on the ballot. The last veto referendum was in 1982. They have been used 24 times in Missouri's history. Veto referendum, also known as a "popular referendum," is used by citizens to call a vote on and potentially repeal recently ratified laws. Depending on the state a veto may be implemented only during a short window after the legislation has been passed.

FACT: Voters have upheld only two veto referendums in state history: prohibition enforcement in 1920 and workmen's compensation in 1926.

Like initiated state statutes, the signature requirement is a minimum of 5 percent of the total vote cast in the most recent gubernatorial election from two-thirds of the state's congressional districts (currently six out of nine). However, in order for veto to be on the ballot, petition language must be filed within 90 days of the end of the legislative session in which it was adopted. Additionally, sufficient valid petition signatures must be submitted at that time. The brief filing window can be very restrictive; however referenda filed in time have a high probability of success. Two of the 24 veto referenda in state history resulted in voters upholding legislation passed by the General Assembly.

In sharp contrast to the relatively few measures that appear on the statewide ballot, local measures are frequent. Particularly popular are tax levies and bond measures. Missouri does not have a local initiative and referendum provision; therefore provisions are set by the city or county charter. However, the state does have separate provisions in its Constitution mandating local governments to hold referendums for municipal and school bond issues, debt ceilings and tax levies.

Statewide measures face numerous hurdles to get on ballots, but local measures face difficulties after qualifying. Of the 114 counties in Missouri only 28 have some form of election information available on county websites. While this may not be a problem for those directly involved in initiative campaigns or elections, voters have little

information available prior to election. Additionally, election counts are not available online in at least 75 percent of counties. Those providing some ballot information and election results usually do so for the most recent year or two.

Conclusions

While Missouri has some trouble spots, the state is on the right track. With the exception of a missing recall law, it offers citizens all the tools for direct democracy: veto and statutory referenda, and constitutional amendments. However, distribution requirements and threats of legal challenges can stifle direct democracy, making it one of the more complicated states in the country.

Local ballot measures face a different problem. Information on local elections and ballot questions is not widely available.

Despite those problems, the tools to reform government and change policy are available to citizens.

For more information on Missouri, visit **ballotpedia.org**